IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.124 OF 2006
IN
COMPANY APPLICATION NO.426 OF 2005
IN
COMPANY PETITION NO.361 OF 1996

Automobile & Agricultural
Industries Corporation ..Appellants.
(Org. Applicants)

Vs.

The Official Liquidator
& Ors. ..Respondents.
(Org.Respondents)

Mr.S.S.Shah with Mr.G.C.Mohanty i/b.M/s.Kirit Damania & Co. for the Appellants.

None for Respondent No.1.

Mr.Ajay Panikar for Respondent Nos.2 and 3.

Mr.U.S.Patole, Asstt. Official Liquidator present.

CORAM: DR.S.RADHAKRISHNAN AND
S.J.VAZIFDAR, JJ.
DATED: 21ST MARCH, 2006

P.C. :

Heard learned counsel for the Appellants and the learned counsel for Respondent Nos.2 and 3. The Official Liquidator is personally present.

2. By this Appeal, the Appellants are challenging the order dated 13th January, 2006 passed by the learned Single Judge in a Company Application.

3. After hearing the parties for some time, the learned counsel for the Appellants pointed out that the Appellants are seeking only a limited relief, in the sense that the Appellants are not a party to the consent terms which was filed in the Original Application No.1995 of 1999 before the Mumbai Debt Recovery Tribunal - I at Mumbai. The learned counsel points out that part of clause 5 wherein reads as under :

> "The terms and conditions mentioned in the said Memorandum of Understanding dated 14.06.2003 between the Developer and Shri Vyas, the Defendant No.2 shall form part and parcel of this Consent Terms, to the extent such terms are not contrary to the terms of this Consent Terms. It is further agreed that on or after the date of approval of this consent terms by the DRT, Shri Vyas or his developer shall be entitled to enter upon the said land & building and demolish the said structure/building and erect new constructions as per the plan as approved by the local authorities, at his own costs, risk and expenses, pending the full payment to the banks under this consent terms."

4. The learned counsel for the Appellants contends that the Appellants are tenants of the company, which is in liquidation, viz. Bombay Silk Mills Ltd. (In Liquidation). The anxiety of the Appellants, who

have the premises in the said building, is that in view of the aforesaid consent terms, the premises should not be demolished and that the Appellants should not be dispossessed without due process of law.

5. Having regard to the facts and circumstances of the case, we clarify that the Appellants, who were not even a party to the said consent terms, are not bound by the said consent terms. It is also made clear that the structure in which the Appellants are staying, shall not be demolished and the Appellants shall not be dispossessed, except by due process of law.

6. Leave under section 446 of the Companies Act, 1956 is also granted to the Appellants.

Appeal stands disposed of accordingly.

(DR.S.RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)